

The application is ☐ granted.
☒ denied.



Edgardo Ramos, U.S.D.J.

Dated: 11/26/13

New York, New York 10007

The Court's Order
 Fax: (518) 751-1801 *125ved*

on Nov. 25,

2013

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November 26, 2013

Honorable Edgardo Ramos
 United States District Court Judge
 Thurgood Marshall
 United States Courthouse
 40 Foley Square
 New York, New York 10007
via facsimile to: (212) 805-7943

USDC SDNY
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Re: De La Paz v. Rubin & Rothman, LLC et al.
Case No. 11-cv-9625

Dear Judge Ramos:

On November 19, 2013 the United States Court of Appeals for the Second Circuit issued a ruling which has a direct bearing upon the Plaintiff's pending motion for attorneys fees and costs. In *Cabala v. Crowley*, 2013 U.S. App. LEXIS 23298 *13-*14 (2nd Cir.) the Second Circuit stated that ".....attorneys fees in an FDCPA action are awarded to the prevailing party, *not his or her attorneys* (italics added), 15 U.S.C. § 1692k(a)(3)." I include a copy of the *Cabala* decision herewith.

In their opposition to the Plaintiff's motion for fees and costs the Defendants sought to depose the Plaintiff in conjunction with issues raised by her motion for fees and costs. In response to this request the Plaintiff's counsels vehemently argued that the Plaintiff should not be compelled to appear for a deposition as the motion for fees and costs is, essentially, theirs and theirs alone. Defendants' request to depose the Plaintiff was then denied by Magistrate Judge Yanthis. However, as the holding in *Cabala* clearly demonstrates, the attorneys fees in this matter, if any, are deemed awarded to the Plaintiff and not to her counsels. Thus, the argument by the Plaintiff's counsels that the Plaintiff is merely a spectator to the resolution of the attorneys fees and costs issues is without merit. In fact, the *Cabala* ruling indicates the exact opposite to be true. It is the Plaintiff's counsels who are participatory spectators to the Plaintiff's attempt to achieve an award of attorneys fees for herself. Therefore, the Plaintiff should be compelled to appear for a deposition and answer questions under sworn oath in regard to the many issues which have been raised by her motion for fees and costs.

Based upon the ruling in *Cabala* the Defendants' respectfully request that Your Honor stay any decision in regard to the attorneys fees Report and Recommendation issued by Magistrate

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Judge Yanthis until after the Plaintiff has appeared and testified at a deposition. I further request that Your Honor file this letter via ECF so that the docket reflects same.

Respectfully submitted,

/ s / *Robert L. Arleo*

Robert L. Arleo

RLA:gra

cc: Daniel Schlanger, Esq. via email

James Fishman, Esq. via email

Keith Rothman, Esq.